

RECORDATION NO. 12013 Filed 1425

Avec Equipment Corporation
P.O. Box 706
Galion, Ohio 44833

JUL 18 1980 - 9 45 AM

INTERSTATE COMMERCE COMMISSION

0-200A021

No.

Date JUL 18 1980

Fee \$ 50.00

ICC Washington, D. C.

Secretary
Interstate Commerce Commission
Washington, D. C. 20423

FEE OPERATION BR.
I.C.C.

JUL 18 9 41 AM '80

RECEIVED

Re: Agreement with Lykens Valley Railroad Company

Gentlemen:

We enclose herewith for recording pursuant to the provisions of Section 11303 of the Interstate Commerce Act the original and two certified copies of an Operating and Use Agreement dated March 12, 1980 between Lykens Valley Railroad Company and Avec Equipment Corporation, which agreement provides for the operation and use by Lykens Valley Railroad Company of boxcars owned by Avec Equipment Corporation or held under equipment trust agreements of which Avec Equipment Corporation is the beneficiary and Philip S. Hesby, the trustee.

The parties to the transaction are as follows:

Lessor: Avec Equipment Corporation
P.O. Box 706
Galion, Ohio 44833
(and Philip S. Hesby as trustee
for Avec for cars held under
equipment trust agreements)

Lessee: Lykens Valley Railroad Company
P.O. Box 517
Elizabethville, Pa. 17023

The following is a general description of the railroad equipment covered by the documents:

| No. of Units | Description | A.A.R. Mechanical Designation | Identifying Road Nos. |
|-----------------|---------------------------------|-------------------------------------|---|
| 166 | 40' and 50' - 50 ton boxcars | XP | See Appendix A to Operating and Use Agreement |

(subject to
increase)

Secretary
Interstate Commerce Commission

Page Two

Also enclosed is a check in the amount of \$50.00 payable to the Treasurer of the United States to cover recording of the Agreement. Would you please acknowledge receipt of the enclosures on the enclosed copy of this letter and stamp and return to our representative the original of the document.

Very truly yours,

AVEC EQUIPMENT CORPORATION

By: Philip S. Hesby, Pres.
Philip S. Hesby

Interstate Commerce Commission
Washington, D.C. 20423

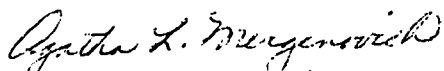
OFFICE OF THE SECRETARY

Philip S. Hesby
Avec Equipment Corporation
P. O. Box 706
Gallon, Ohio 44833

Dear **Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **7/17/80** at **9:45AM**, and assigned re-recording number(s). **12015**

Sincerely yours,


Agatha L. Mergenovich
Secretary

Enclosure(s)

RECORDATION NO. 12015
Filed 1425

JUL 18 1980 - 9 45 AM

CERTIFICATE OF NOTARY PUBLIC INTERSTATE COMMERCE COMMISSION

STATE OF PENNSYLVANIA :
COUNTY OF PHILADELPHIA : SS

The undersigned Notary Public hereby certifies that he has compared the copy of a document entitled Operating and Use Agreement and the Amendment attached thereto with the original thereof and that such copy is a complete copy of the original thereof in all respects, including the dates, signatures and acknowledgments.

Dated this 27TH day
of June, 1980


Notary Public

WILLIAM O. BREM
Notary Public, Phila., Phila. Co.
My Commission Expires Oct. 13, 1983

OPERATING AND USE AGREEMENT

AGREEMENT made and entered into as of the 12th day of March, 1980, between AVEC EQUIPMENT CORPORATION, an Ohio corporation, (hereinafter called "Owner") and LYKENS VALLEY RAILROAD COMPANY, a Pennsylvania Corporation, (hereinafter called "User").

W I T N E S S E T H:

WHEREAS, User desires to obtain from Owner certain railroad cars, hereinafter specifically designated or to be specifically designated for the purposes and upon the terms and conditions as set forth in this agreement.

NOW, THEREFORE, the parties hereto agree as follows:

1. Cars to be Furnished: Owner agrees to make available to User, and User agrees to use during the term of this agreement that number of used railroad cars to be provided by Owner under the terms and conditions and for the rentals hereinafter set forth, which cars are sometimes hereinafter called the "Cars". The Cars will be 40' and 50' fifty ton Box Cars. Any additional descriptions of the Cars, including any Association of American Railroads (A.A.R.) mechanical designation, identifying marks, road or serial numbers to be delivered to User upon the execution of this agreement, are set forth in Appendix A hereto, and amendments. Any additional Cars delivered to User shall be provided for and accepted by User as provided in paragraph 6, on the basis set forth in paragraph 5 hereof. When any such subsequent delivery of Cars is made, an amendment to Appendix A shall be executed by Owner indicating

the type and description of the Cars involved, as reflected in Appendix A for Cars delivered upon the execution of this agreement. Upon acceptance by User as provided in paragraph 3 of any subsequently delivered Cars, the provisions of this agreement shall become fully applicable thereto.

2. Term of Agreement: The term of this agreement for any Cars delivered hereunder shall commence upon their acceptance by User, as provided for in paragraph 6 hereof, and shall terminate on March 31, 1981, irrespective of the date of the acceptance of any Car. Owner shall have the right, to renew this agreement on a year to year basis upon giving User 90 days' written notice.

3. Delivery and Use of Cars: Owner agrees to deliver at its expense, and User agrees to accept the Cars at such point or points to which the parties may agree, not necessarily on User's property. Owner's obligation as to such deliveries shall be subject to all delays resulting from causes beyond its control. The cars shall be used only in such inter-line service as shall be mutually agreed upon between the parties, and none of the Cars, except with prior written consent of Owner, shall be shipped beyond the boundaries of the United States, Canada or Mexico. ^{or} ~~or Mexico~~ ^{DSA} Owner agrees to apply User's reporting marks to the Cars, notwithstanding that title to them shall at all times remain in Owner. Owner will also cause each Car to be marked with User's road numbers referred to in Appendix A. Such road numbers shall not be changed, except by agreement of both Owner and User.

4. Rental: Beginning with the third month after acceptance of the Cars, a Rental shall be payable each calendar month thereafter consisting of the net of all amounts paid or received by User during such month under the then applicable Car Hire, Car Service and A.A.R. repair billing rules, less a fee to User (Service Fee) of Seven Dollars (\$7.00) per Car per calendar month. Whenever the net of all amounts received by the User in a calendar month exceeds the amount of all payables and the Service Fee for such month, User shall promptly pay to Owner such net amount. In any event, User shall be entitled to receive the Service Fee for each Car for each calendar month this agreement is in effect with respect to such Cars then in service.

5. Reports: Beginning in July, 1980, User shall report to Owner by the 20th day following the end of each calendar month the information applicable to such month with respect to all Cars:

- (a) Net amount of per diem, incentive per diem, if any, and mileage received and/or paid by User;
- (b) Gross amount of car service charges paid;
- (c) Net amount of A.A.R. payable repair billing;
- (d) Gross amount of Service Fee;
- (e) Net amount due Owner.
- (f) User shall use Accounting and/or Computer Service Company as directed by Owner, at Owner's expense.

In addition to the foregoing, User shall report to Owner in substantially the same form as Appendix B hereto in each June and December a listing,

by Car and/or groups of Cars as directed by Owner, of all amounts received with respect to such Car pursuant to Car Hire Rules and a listing of all A.A.R. repair billing actually paid in the prior period with the approval of the Owner.

6. Acceptance of Cars by User at Owner's Expense: Each of the Cars shall be subject to User's inspection and approval.

7. Maintenance or Repairs: Owner shall at all times during the term of this agreement, and at its own cost and expense, maintain and keep the Cars in good and proper repair and running condition. In the event, however, that any of the Cars are damaged or destroyed while on User's railroad, User shall assume financial responsibility therefor. Owner also agrees that it shall, at its own cost, comply with and maintain the Cars in accordance with all governmental laws, regulations and requirements, and with the Rules of Interchange of the Association of American Railroads (or of any successor thereto), with respect to the use, maintenance and operation of the Cars during the continuance of this agreement.

8. Cars Removed from Service: In the event of the loss or destruction of any Car from any cause whatsoever during the term of this agreement, the Rental with respect to such Cars shall terminate at the time provided for in the Car Hire Rules, provided, however, that the Service Fee shall terminate three months thereafter. The Owner or its insurer shall have the rights of subrogation and indemnification to and for any claim for loss or destruction and may thereunder, at its option, assume the right to collect its claim for the value of such Car from the party responsible and liable for the loss or destruction of the Car. In

furtherance of the foregoing, User hereby authorizes and empowers Owner in Owner's own name, or in the name of and as attorney hereby irrevocably constituted for User to ask, sue for, collect, receive and enforce any and all rights to which User may be entitled by reason of the destruction of the said Car. Owner shall have the right, but shall not be obligated, to substitute for any destroyed Car another Car of the same type and capacity and the same monthly Rental with respect to such substituted Car shall commence upon delivery of such substituted Car to User.

9. Payment of Taxes, Liens and Other Items:

1. The following additional costs and expenses shall be the responsibility of and be paid by Owner:

- (a) All license fees, assessments and sales, use, property and other tax or taxes now or hereafter imposed by any state, federal or local government upon the Cars or upon the use thereof, whether assessed in the name of Owner or User. If User for any reason pays any of the aforesaid, Owner agrees to reimburse User promptly upon receipt of bills, therefor; and
- (b) The cost and expense of removing User's markings from the Cars upon termination of this agreement.
- (c) User shall not pay a license fee, assessment or tax in the first instance without giving Owner at least ten (10) days written notice thereof so that Owner

may have an opportunity to make payment itself or contest the same in which latter event User will cooperate with Owner.

2. User agrees to indemnify Owner, and hold it harmless from any loss, expense, or liability which owner may suffer or incur, from any charge, claim, proceeding, suit or other event which in any manner or from any cause arises in connection with the use, possession or operation of a Car while subject to this lease, and without regard as to how such charge, claim, proceeding, suit or other event arose, including without limiting the generality of the foregoing, WHITHER it arises from latent or other defects which may or may not have been discoverable by Owner. The term Owner shall mean and include any subsidiary, parent or affiliated corporation, or person for all purposes of this sub-paragraph.

10. Assignment: User may not transfer or assign its interest under this agreement with respect to the Cars covered hereunder without Owner's prior written consent. No right, title or interest in any of the Cars shall vest in User by reason of this agreement except for the provisions of paragraph 4 of this agreement, or by reason of the delivery to or use by User of the Cars, except the right to use the Cars in accordance with the terms of this agreement. Owner and any assignees of Owner shall be entitled to sell, assign and transfer its entire title and reversion in and to the Cars and/or its right to Rentals and other payments payable by User hereunder and to the performance of the other covenants

herein made by User, and such assignee or any subsequent assignee thereof shall have and succeed to all of the rights, and remedies herein conferred upon and reserved to Owner. User shall be obligated under this agreement to the Owner, assignee or subsequent assignee upon receipt by User of written notification from both the Owner and its assignee or by any assignee or subsequent assignee that such assignment or subsequent assignment has taken place.

11. Remedies: If User shall fail to perform any of its obligations hereunder, Owner shall give written notice to User, and if User shall fail to cure within thirty (30) days of such notice, Owner at its election may either (a) terminate this agreement immediately, or (b) withdraw the Cars which have to that date been delivered from the service of the User and deliver the same, or any thereof, to others upon such terms as Owner may see fit.

If User shall fail to carry out and perform any of its obligations under this agreement, or if a petition in bankruptcy, or for reorganization, or for a trustee or receiver is filed by or against User (unless such petition shall be dismissed within thirty (30) days from the filing or other effective date thereof, or shall, within such period be nullified, stayed or otherwise rendered ineffective, or unless any such receiver(s) or trustee(s) shall, within thirty (30) days from date of his or their appointment, adopt this agreement pursuant to due authority of the Court of his or their appointment), then and in any such event,

Owner may, at its option, declare this agreement terminated and upon such declaration all Rentals not theretofore due and payable shall forthwith become due and payable and Owner may enter upon the railroad or premises where the Cars or any of them may be and retake possession thereof, and remove User's road number and name therefrom. If Owner waives its said rights or does not declare this agreement terminated, User's obligations hereunder shall continue. The aforesaid remedies of Owner shall not be deemed exclusive, but shall be cumulative and in addition to all other rights and remedies given or provided by law or in equity. No delay or failure on the part of Owner to exercise any rights hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right preclude any other or further exercise thereof, and no act or omission to act by Owner against User or against any Car, or any delay or indulgence granted or allowed by Owner, shall prejudice any of Owner's rights.

12. Termination and Return of Cars: At the end of the term of this agreement, or upon any termination thereof for cause as defined herein, User shall forthwith surrender possession of the Cars (except Cars previously removed from service) to Owner at such point or points where the Cars may then be located. From the time of such surrender, the Cars shall become and remain the responsibility of Owner.

13. Recordation: Owner at its option may cause this agreement to be filed and recorded with the Interstate Commerce Commission under the Interstate Commerce Act in order to publish notice of, and to

protect the title of Owner to the Cars. User shall execute any and all other and further instruments as shall reasonably be requested by Owner to assure such publication and such protection of such title. Owner shall pay all costs, charges and expenses, including all recording and registration taxes and fees, incident to the filing, registering and/or recording of this agreement and of any instruments of further assurance hereunder.

14. All Parties Bound: This agreement shall be binding upon and inure to the benefit of the Owner and User and their successors and assigns.

15. Execution in Counterparts: This agreement may be simultaneously executed in two or more counterparts, each of which shall be deemed to be an original, and such counterparts together shall constitute but one and the same agreement which shall be sufficiently evidenced by any such original counterpart.

16. Notice in Writing: Any notice, demand or other communication hereunder shall be in writing and shall be deemed to have been duly given when personally delivered or deposited in the mail, first class postage prepaid, addressed as follows: If to the Owner: To the attention of Philip Hesby, President, Avec Equipment Corporation, P.O. Box 706, Galion, Ohio, 44833. If to the User: To the attention of D. R. Moyer, President, Lykens Valley Railroad Company, 37 North Market Street, P.O. Box 517, Elizabethville, PA, 17023, or addressed to either party at such other address as such party shall hereafter furnish to the other in writing.

17. Construction: The remedies in this agreement provided in favor of the Owner shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in Owner's favor existing at law or in equity and may be exercised from time to time and as often and in such order as may be deemed expedient by the Owner. The captions herein are inserted for convenience only and shall not affect the construction of this agreement. No delay or omission of the Owner in the exercise of any right or power accruing upon any event of default shall impair any right or power or shall be construed to be a waiver of such event of default or an acquiescence therein. The provisions of this agreement and all rights and obligations hereunder shall be governed by and construed in accordance with the laws of the State of Ohio.

IN WITNESS WHEREOF, Owner and User, respectively have caused these presents to be signed in their respective corporate names as of the day and year first above written.

AVEC EQUIPMENT CORPORATION

By Philip S. Healy, Pres.
President

LYKENS VALLEY RAILROAD COMPANY

By Alvin R. Meyer
President

COMMONWEALTH OF PENNSYLVANIA)

COUNTY OF PHILA)

ss:

On this 24th day of APRIL, 1980, before me, the undersigned Notary Public, personally appeared Donald R. Moyer, who, being by me duly sworn acknowledged that he is President of the Lykens Valley Railroad Company that he executed the foregoing instrument for and on behalf of said corporation and that the execution of the foregoing instrument was the free act and deed of said corporation.

Bernard Z. Schantzer

My commission expires: 5/8/82

BERNARD Z. SCHANTZER
Notary Public, Phila., Phila. Co.
My Commission Expires May 8, 1982

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF PHILADELPHIA : SS:

On this 13th day of June, 1980, before me, the undersigned Notary Public, personally appeared Philip S. Hesby, who, being by me duly sworn, acknowledged that he is President of Avec Equipment Corporation; that he executed the foregoing instrument for and on behalf of said corporation and that the execution of the foregoing instrument was the free act and deed of said corporation.



My commission expires:

WILLIAM O. BREM
Notary Public, Phila., Phila. Co.
My Commission Expires Oct. 13, 1983

LYKENS VALLEY RAILROAD COMPANY/AVEC EQUIPMENT CORPORATION
MODIFICATION AND AMENDMENT OF AGREEMENT
AND
ACKNOWLEDGMENT OF ASSIGNMENT

WHEREAS, Lykens Valley Railroad Company ("Railroad") and Avec Equipment Corporation ("Avec") are parties to an operating and use agreement dated March 12, 1980 (the "Agreement") which provides that the Railroad will operate certain railroad boxcars furnished by Avec upon the terms and conditions set forth therein; and

WHEREAS, the legal title to certain boxcars which Avec proposes to furnish under the Agreement will be held by Philip S. Hesby ("Hesby"), President of Avec and its principal shareholder, as trustee for Avec under various railroad equipment trusts of which Avec is the beneficiary by assignment; and

WHEREAS, Avec is a party to an assignment car agreement dated June 28, 1979 (the "Scott Agreement") with Scott Paper Company ("Scott") providing for the use by Scott of boxcars delivered by Avec for purposes of shipping Scott products; and

WHEREAS, the Railroad and Avec desire to modify and amend the Agreement to identify certain boxcars which may become subject to the Agreement; to acknowledge Hesby as the holder of legal title to certain boxcars; to provide for acceptance of boxcars under the Agreement; and for certain other purposes set forth below.

NOW, THEREFORE, the parties hereto agree as follows:

1. Attached hereto as Appendix A is a list of boxcars, identified by car numbers, which may be delivered for use under

the Agreement. Such list may be supplemented from time to time to add or delete cars.

2. All boxcars (the "Boxcars") which carry the reporting marks of the Railroad and are accepted for use by Scott under the Scott Agreement shall be considered to have been accepted by the Railroad and to be covered by the Agreement without any further action or acceptance by Railroad under paragraph 6 of the Agreement, or otherwise, and it shall not be necessary to attach a list of such cars or otherwise further amend the Agreement to provide that such cars are covered thereunder.

3. Boxcars for which legal title is held by Hesby as trustee for Avec shall be acceptable for delivery by Avec under the Agreement.

4. Hesby hereby agrees to be bound by the terms of the Agreement to the extent necessary as holder of legal title to any of the Boxcars. All actions taken by Avec under the Agreement shall be binding on Hesby.

5. For purposes of paragraph 3 of the Agreement, the Boxcars shall be used as provided in the Scott Agreement and shall remain within the United States of America.

6. Railroad acknowledges that the Boxcars have or will be mortgaged by Avec and Hesby to Provident National Bank (the "Bank") to secure loans by the Bank to refurbish the Boxcars, and that such mortgage has or will be recorded with the Interstate Commerce Commission.

7. Railroad acknowledges that Avec's rights under the Agreement have been assigned to the Bank as further security for the loans;

that the Bank has not assumed any of the obligations of Avec under the Agreement; and that the assignment has been or will be recorded with the Interstate Commerce Commission.

8. The parties hereto agree that the Agreement delivered to the Bank by Avec is the original thereof and that all counterparts are copies.

9. Railroad agrees to make all payments under the Agreement and deliver all reports required to be delivered under the Agreement directly to the Bank at Broad and Chestnut Streets, Philadelphia, Pennsylvania 19101, Attention: Barbara J. S. Bear, Account No. 384-500-1 or to such other address as the Bank may specify in writing.

IN WITNESS WHEREOF, the parties have executed this modification and amendment this 31 day of May, 1980.

*Witness
H. J. Daniel*

LYKENS VALLEY RAILROAD COMPANY

By: *Richard M. Meyer* *PRESIDENT*
Authorized Officer

AVEC EQUIPMENT CORPORATION

By: *Philip S. Hesby* *Pres*
Philip S. Hesby,
President

PHILIP S. HESBY, as trustee for
Avec Equipment Corporation under
various equipment trust agreements

Philip S. Hesby *Trustee*

COMMONWEALTH OF PENNSYLVANIA :

SS:

COUNTY OF ~~PHILADELPHIA~~ :

Dauphin

On this *31* day of *May*, 1980, before me, the undersigned Notary Public, personally appeared Donald R. Moyer, who, being by me duly sworn acknowledged that he is President of the Lykens Valley Railroad Company, that he executed the foregoing instrument for and on behalf of said corporation and that the execution of the foregoing instrument was the free act and deed of said corporation.

Kermit I. Daniel

Donald R. Moyer

My commission expires:

KERMIT I. DANIEL, NOTARY PUBLIC
ELIZABETHVILLE DAUPHIN CO. PENNA
MY COMMISSION EXPIRES JANUARY 18, 1983

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF PHILADELPHIA : SS:

On this *13th* day of *June*, 1980, before me, the undersigned Notary Public, personally appeared Philip S. Hesby, the person who signed the foregoing instrument, who, being by me duly sworn, acknowledged that he executed the foregoing instrument as his free act and deed for the purposes set forth therein.



My commission expires:

WILLIAM O. BREM
Notary Public, Phila., Phila. Co.
My Commission Expires Oct. 13, 1983

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF PHILADELPHIA : SS:

On this *13th* day of *June*, 1980, before me, the undersigned Notary Public, personally appeared Philip S. Hesby, who, being by me duly sworn, acknowledged that he is President of Avec Equipment Corporation; that he executed the foregoing instrument for and on behalf of said corporation and that the execution of the foregoing instrument was the free act and deed of said corporation.



My commission expires:

WILLIAM O. BREM
Notary Public, Phila., Phila. Co.
My Commission Expires Oct. 13, 1983

APPENDIX A TO OPERATING AND USE AGREEMENT
DATED MARCH 12, 1980 BETWEEN
LYKENS VALLEY RAILROAD COMPANY AND
AVEC EQUIPMENT CORPORATION

Initial list of boxcars which may be
delivered under agreement:

166 - LYKENS VALLEY

| | | | |
|--------|--------|--------|--------|
| 123000 | 123043 | 123087 | 123150 |
| 123001 | 123044 | 123088 | 123151 |
| 123002 | 123045 | 123089 | 123152 |
| 123003 | 123046 | 123090 | 123153 |
| 123004 | 123047 | 123091 | 123154 |
| 123005 | 123048 | 123092 | 123155 |
| 123006 | 123049 | 123093 | 123156 |
| 123007 | 123050 | 123094 | 123157 |
| 123008 | 123051 | 123096 | 123158 |
| 123009 | 123052 | 123097 | 123159 |
| 123010 | 123053 | 123098 | 123160 |
| 123011 | 123054 | 123099 | 123161 |
| 123012 | 123055 | 123100 | 123162 |
| 123013 | 123056 | 123101 | 123163 |
| 123014 | 123057 | 123103 | 123164 |
| 123015 | 123058 | 123104 | 123165 |
| 123016 | 123060 | 123105 | 123166 |
| 123017 | 123061 | 123106 | 123167 |
| 123018 | 123062 | 123107 | 123168 |
| 123019 | 123063 | 123108 | 123169 |
| 123020 | 123065 | 123109 | 123170 |
| 123021 | 123066 | 123110 | 123171 |
| 123022 | 123067 | 123111 | 123172 |
| 123023 | 123068 | 123112 | 123173 |
| 123025 | 123069 | 123114 | 123175 |
| 123026 | 123070 | 123117 | 123176 |
| 123027 | 123071 | 123118 | 123177 |
| 123028 | 123072 | 123119 | 123178 |
| 123029 | 123073 | 123120 | 123179 |
| 123030 | 123074 | 123121 | 123180 |
| 123031 | 123075 | 123122 | 123500 |
| 123032 | 123076 | 123123 | 123501 |
| 123033 | 123077 | 123124 | 123502 |
| 123034 | 123078 | 123125 | 123503 |
| 123035 | 123079 | 123126 | 123504 |
| 123036 | 123080 | 123127 | 123505 |
| 123037 | 123081 | 123128 | 123506 |
| 123038 | 123082 | 123129 | 123507 |
| 123039 | 123083 | 123130 | 123508 |
| 123040 | 123084 | 123131 | 123509 |
| 123041 | 123085 | 123132 | |
| 123042 | 123086 | 123133 | |